

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Kenneth Garcia,

Plaintiff,

v.

Nannette F. Barnes, Warden; Ms. Benson,
Correctional Officer; Lieutenant Lugo; D.
Taylor, Correctional Officer; C. Leary,
Correctional Officer; T. Oxidon, Correctional
Officer; Thompson, Correctional Officer;
Johnson, Correctional Officer,

Defendants.

C/A No. 9:23-cv-1877-SAL

ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Molly H. Cherry made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) (the “Report”). [ECF No. 51.] Plaintiff Kenneth Garcia filed this *pro se* action under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), alleging violations of his constitutional rights while incarcerated at the Federal Correctional Institution, Bennettsville. [ECF No. 1.] Defendants move to dismiss Garcia’s claims or, in the alternative, seek summary judgment. [ECF No. 31.] The magistrate judge recommends the court dismiss Garcia’s complaint, finding that (1) Defendants are immune from suit in their official capacities, and (2) a *Bivens* remedy is unavailable against Defendants in their individual capacities. [ECF No. 51 at 8–19.] The Report notified Garcia of the procedures for filing objections to that recommendation. *Id.* at 20. Garcia, however, did not file objections, and the deadline for doing so—June 27, 2024—has passed.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this

court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court must review *de novo* only the portions of the Report to which a party has specifically objected, and it may accept, reject, or modify the Report in whole or in part. *See* 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After reviewing the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error. The Report, ECF No. 51, is therefore adopted in full and incorporated herein. Defendants’ motion, ECF No. 31, is **GRANTED**, and this case is **DISMISSED** without prejudice.

IT IS SO ORDERED.

July 12, 2024
Columbia, South Carolina


Sherri A. Lydon
United States District Judge